

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN SHULICK,

Plaintiff,

Hon. Paul L. Maloney

v.

Case No. 1:08 CV 121

MICHIGAN DEPARTMENT  
OF CORRECTIONS, et al.,

Defendants.

---

**REPORT AND RECOMMENDATION**

Plaintiff initiated this action on February 5, 2008. Plaintiff's claims against the defendants upon whom service has been effected have since been dismissed. Pursuant to 28 U.S.C. § 636(b)(1)(B), the undersigned recommends that Plaintiff's claims against the various unidentified individuals against whom Plaintiff has advanced claims be **dismissed without prejudice** for failure to timely effect service.

Plaintiff initiated this action on February 5, 2008. (Dkt. #1). Plaintiff amended his complaint on April 10, 2008, and again on January 26, 2009. (Dkt. #6, 56). In his second amended complaint, Plaintiff asserts claims against numerous "unknown" individuals. (Dkt. #56). In the more than two years since Plaintiff's Second Amended Complaint was accepted for filing, Plaintiff has failed to identify the "unknown" individuals against whom he asserts claims. Moreover, Plaintiff has neither requested an extension of time to effect service on these defendants nor has he requested the Court's assistance in identifying these individuals.

Federal Rule of Civil Procedure 4(c) indicates that “[a] summons must be served with a copy of the complaint.” The time frame within which service must be effected is articulated in Rule 4(m), which provides that if service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, “the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” If the plaintiff demonstrates good cause for such failure, however, “the court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m); *see also, Bush v. City of Zeeland*, 2003 WL 22097837 at \*2 (6th Cir., Sep. 5, 2003) (citation omitted). Considering Plaintiff’s lack of diligence, the Court recommends that Plaintiff’s claims against the “unknown” individuals against whom Plaintiff asserts claims be dismissed without prejudice for failure to timely effect service.

### **CONCLUSION**

For the reasons articulated herein, the undersigned recommends that Plaintiff’s claims against the “unknown” individuals against whom Plaintiff asserts claims be dismissed without prejudice for failure to timely effect service. The undersigned further recommends that appeal of this matter would not be taken in good faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997); 28 U.S.C. § 1915(a)(3).

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within fourteen (14) days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.1981).

Respectfully submitted,

Date: July 18, 2011

/s/ Ellen S. Carmody

ELLEN S. CARMODY

United States Magistrate Judge